



State of California
Employment Training Panel

Arnold Schwarzenegger, Governor

August 19, 2008

Angel Sanchez
Vice President, Government Partnerships - CA
Bank of America Corporation
CA6-506-01-03
5295 Arlington Avenue
Riverside, CA 92504-2604

Dear Mr. Sanchez:

Enclosed is our final audit report relative to the Employment Training Panel Agreement No. ET03-0203 for the period April 1, 2003 through March 31, 2005.

Also enclosed is a demand letter for payment of costs disallowed in the audit report. Payment is due upon receipt of this letter. If you wish to appeal the audit findings, you must follow the procedure specified in Attachment A to the audit report.

We appreciate the courtesy and cooperation extended to our auditor during the audit. If you have any questions, please contact Charles Rufo, Audit Director, at (916) 327-5439.

Sincerely,

Original signed by:

Charles Rufo
Audit Director

Enclosures

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BANK OF AMERICA CORPORATION

ET03-0203

Final Audit Report

For The Period

April 1, 2003 through March 31, 2005

Report Published August 19, 2008

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AUDITOR'S REPORT

Summary

We performed an audit of Bank of America Corporation (B of A) Agreement No. ET03-0203, for the period April 1, 2003, through March 31, 2005. Our audit pertained to training costs claimed by the Contractor under this Agreement. Our audit fieldwork was performed during the period December 4, 2006, through December 12, 2006.

The Employment Training Panel (ETP) paid the Contractor a total of \$2,911,081.21. Our audit supported \$2,896,729.21 is allowable. The balance of \$14,352 is disallowed and must be returned to ETP. The disallowed costs resulted from nine trainees who did not meet the ETP minimum wage rate and one trainee who did not meet full-time employment requirements. In addition, we noted an administrative finding for inaccurate reporting of trainee wage rates.

AUDITOR'S REPORT (continued)

Background

Bank of America Corporation (B of A) provides a diversified range of banking and non-banking financial services primarily in California and 20 other states and in selected international markets. The training will serve the counties of Sacramento, Orange, Contra Costa, Fresno, and Los Angeles.

This is the 18th ETP Agreement with B of A. The training was proposed to cross-train employees to answer client questions on multiple products and services. The training is to prepare individuals to handle routine questions regarding credit cards and checking accounts. The Agreement provided for training in Business Skills, Continuous Improvement, and Management Skills.

This Agreement allowed B of A to receive a maximum reimbursement of \$3,644,160 for retraining 2,920 employees. During the Agreement term, the Contractor placed 2,055 trainees and was reimbursed \$2,911,081.21 by ETP.

Objectives, Scope, and Methodology

We performed our audit in accordance with *Government Auditing Standards*, promulgated by the United States General Accounting Office. We did not audit the financial statements of B of A. Our audit scope was limited to planning and performing audit procedures to obtain reasonable assurance that B of A complied with the terms of the Agreement and the applicable provisions of the California Unemployment Insurance Code.

Accordingly, we reviewed, tested, and analyzed the Contractor's documentation supporting training cost reimbursements. Our audit scope included, but was not limited to, conducting compliance tests to determine whether:

- Trainees were eligible to receive ETP training.
- Training documentation supports that trainees received the training hours reimbursed by ETP and met the minimum training hours identified in the Agreement.
- Trainees were employed continuously full-time with a participating employer for 90 consecutive days after completing training, and the 90-day retention period was completed within the Agreement term.
- Trainees were employed in the occupation for which they were trained and earned the minimum wage required at the end of the 90-day retention period.

AUDITOR'S REPORT (continued)

- The Contractor's cash receipts agree with ETP cash disbursement records.

As part of our audit, we reviewed and obtained an understanding of the Contractor's management controls as required by *Government Auditing Standards*. The purpose of our review was to determine the nature, timing, and extent of our audit tests of training costs claimed. Our review was limited to the Contractor's procedures for documenting training hours provided and ensuring compliance with all Agreement terms, because it would have been inefficient to evaluate the effectiveness of management controls as a whole.

Conclusion As summarized in Schedule 1, the Summary of Audit Results, and discussed more fully in the Findings and Recommendations Section of our report, our audit supported \$2,896,729.21 of the \$2,911,081.21 paid to the Contractor under this Agreement is allowable. The balance of \$14,352 is disallowed and must be returned to ETP.

Views of Responsible Officials The audit findings were discussed with Angel Sanchez, Vice President, Government Partnerships – California, during a telephone exit conference held on January 9, 2007. Mr. Sanchez agreed to bypass issuance of the draft report and proceed to the final audit report.

The issuance of your final audit report has been delayed by the audit unit. Therefore, ETP waived the accrual of interest for the disallowed costs beginning January 9, 2007, through the issue date of this final audit report. The interest waiver (adjustment) was \$2,068.39, which was deducted from the total accrued interest.

Audit Appeal Rights If you wish to appeal the audit findings, it must be filed in writing with the Panel's Executive Director within 30 days of receipt of this audit report. The proper appeal procedure is specified in Title 22, California Code of Regulations, Section 4450 (attached).

AUDITOR'S REPORT (continued)

Records

Please note the ETP Agreement, Paragraph 5 a. 1., requires you to assure ETP or its representative has the right, "...to examine, reproduce, monitor and audit accounting source payroll documents, and all other records, books, papers, documents or other evidence directly related to the performance of this Agreement by the Contractor... This right will terminate no sooner than four (4) years from the date of termination of the Agreement or three (3) years from the date of the last payment from ETP to the Contractor, or the date of resolution of appeals, audits, or litigation, whichever is later."

Charles Rufo
Audit Director

Fieldwork Completion Date: December 12, 2006

This report is a matter of public record and its distribution is not limited. The report is intended for use in conjunction with the administration of ETP Agreement No. ET03-0203 and should not be used for any other purpose.

SCHEDULE 1 – Summary of Audit Results

BANK OF AMERICA CORPORATION

AGREEMENT NO. ET03-0203

FOR THE PERIOD

APRIL 1, 2003 THROUGH MARCH 31, 2005

| | <u>Amount</u> | <u>Reference*</u> |
|--|------------------------------|-------------------|
| Training Costs Paid By ETP | <u>\$2,911,081.21</u> | |
| Costs Disallowed: | | |
| Minimum Wage Requirement Not Met | 14,352 | Finding No. 1 |
| Full-Time Employment Requirement Not Met | - | Finding No. 2 |
| Inaccurate Reporting | <u>-</u> | Finding No. 3 |
| Total Costs Disallowed | <u>14,352</u> | |
| Training Costs Allowed | <u><u>\$2,896,729.21</u></u> | |

* See Findings and Recommendations Section.

FINDINGS AND RECOMMENDATIONS

FINDING NO. 1 – Minimum Wage Requirement Not Met

Trainee employment information shows that nine trainees did not meet the minimum wage requirement specified in the Agreement. Thus, we disallowed \$14,352 in training costs claimed for these nine Job No. 1 trainees.

Exhibit A, paragraph VI. A. of the Agreement between B of A and ETP states, “Each trainee must be employed full-time... for a period of at least ninety (90) consecutive days immediately following the completion of training... Wages at the end of the 90-day retention period shall be equal to or greater than the wages listed in [the Agreement].”

The Agreement required that Job No. 1 trainees earn a minimum wage rate of \$11.15 per hour following the post-training retention period. The Agreement allowed the Contractor to include the dollar value of employer-paid health benefits to meet minimum wage requirements.

The review of payroll records and health benefit documentation from B of A shows that nine trainees did not meet ETP minimum wage requirements. ETP requested health benefit documentation for 31 out of the 82 trainees in our audit sample, which were necessary to meet ETP minimum wage requirements. However, B of A could not provide any health benefit documentation for 9 of the 31 trainees. B of A had reported employer-paid health benefits of \$1.65 per hour for each of these 9 trainees. The table below shows the hourly wage rate reported by B of A (inclusive of reported health benefits), the required wage rate, and actual wage rate from payroll records:

| Trainee No. | Job No. | Reported Wage Rate | Required Wage Rate | Total Actual Wage Rate |
|-------------|---------|--------------------|--------------------|------------------------|
| 1 | 1 | \$11.90 | \$11.15 | \$10.25 |
| 2 | 1 | \$11.15 | \$11.15 | \$9.00 |
| 3 | 1 | \$11.15 | \$11.15 | \$9.50 |
| 4 | 1 | \$11.15 | \$11.15 | \$9.00 |
| 5 | 1 | \$11.15 | \$11.15 | \$9.50 |
| 6 | 1 | \$11.90 | \$11.15 | \$10.25 |
| 7 | 1 | \$11.15 | \$11.15 | \$9.50 |
| 8 | 1 | \$11.15 | \$11.15 | \$9.50 |
| 9 | 1 | \$12.03 | \$11.15 | \$10.38 |

Recommendation

B of A must return \$14,352 to ETP. In the future, the Contractor should ensure trainees meet the minimum wage rate requirements with (or without) employer-paid health benefit costs prior to claiming reimbursement from ETP.

FINDINGS AND RECOMMENDATIONS (continued)

FINDING NO. 2 – B of A's payroll records revealed one trainee did not meet full-time employment requirements upon completion of training. Trainee No. 4 was previously disallowed in Finding No. 1, thus no costs were disallowed for this finding.

Full-Time
Employment
Requirement
Not Met

Exhibit A, page 5, paragraph VII-A of the Agreement states, "Each trainee must be employed full-time, at least 35 hours per week with the Contractor for a period of at least ninety (90) consecutive days immediately following the completion of training. The retention period shall be completed no later than the last day of this Agreement..."

B of A reported that Trainee No. 4 completed a post-training retention period from March 27, 2004 through June 24, 2004 and earned a wage rate of \$9.00 per hour. B of A's payroll records show that Trainee No. 4 worked 31.6 hours per week during the retention period. Review of Employment Development Department quarterly base wage information showed no increase in earnings (estimated hours worked) during the remaining term of the Agreement. The Contractor's representative concurred with this finding.

Recommendation In the future, the Contractor should ensure trainees meet post-training retention requirements prior to claiming reimbursement from ETP.

FINDINGS AND RECOMMENDATIONS (continued)

FINDING NO. 3 – Trainee hourly wage rates reported by B of A on invoices submitted to ETP were inaccurate. As a result, the Contractor did not comply with the Agreement reporting requirements.

Inaccurate
Reporting

Paragraph 2(d) of the Agreement states, “Contractor shall submit invoices and necessary statistical data to ETP in form and manner prescribed by ETP”. Accurate, complete trainee wage rate information is required to verify compliance with Exhibit A, page 5, paragraph VII-A of the Agreement. This section states, “Each trainee must be employed full-time... for a period of at least ninety (90) consecutive days immediately following the completion of training... Wages at the end of the 90-day retention period shall be equal to or greater than the wages listed in [the Agreement].”

We documented actual trainee wage rates for 82 sample trainees. Actual wage rates were identified from payroll information provided by B of A. Trainee wage rates reported by B of A varied by 5 percent or more from actual wage rates for 50 out of 82 trainees (61 percent).

Recommendation In the future, B of A should ensure all trainee wage rates submitted to ETP are accurate and complete. Inaccurate or incomplete data may result in repayment of unearned funds, plus applicable interest to ETP.

ATTACHMENT A - Appeal Process

4450. Appeal Process.

- (a) An interested person may appeal any final adverse decision made on behalf of the Panel where said decision is communicated in writing. Appeals must be submitted in writing to the Executive Director at the Employment Training Panel in Sacramento.
- (b) There are two levels of appeal before the Panel. The first level must be exhausted before proceeding to the second.
 - (1) The first level of appeal is to the Executive Director, and must be submitted within 30 days of receipt of the final adverse decision. This appeal will not be accepted by the Executive Director unless it includes a statement setting forth the issues and facts in dispute. Any documents or other writings that support the appeal should be forwarded with this statement. The Executive Director will issue a written determination within 60 days of receiving said appeal.
 - (2) The second level of appeal is to the Panel, and must be submitted within 10 days of receipt of the Executive Director's determination. This appeal should include a statement setting forth the appellant's argument as to why that determination should be reversed by the Panel, and forwarding any supporting documents or other writings that were not provided at the first level of appeal to the Executive Director. If the Panel accepts the appeal and chooses to conduct a hearing, it may accept sworn witness testimony on the record.
 - (A) The Panel must take one of the following actions within 45 days of receipt of a second-level appeal:
 - (1) Refuse to hear the matter, giving the appellant written reasons for the denial; or
 - (2) Conduct a hearing on a regularly-scheduled meeting date; or
 - (3) Delegate the authority to conduct a hearing to a subcommittee of one or more Panel members, or to an Administrative Law Judge with the Office of Administrative Hearings.
 - (B) The Panel or its designee may take action to adopt any of the administrative adjudication provisions of the Administrative Procedures Act at Government Code Section 11370 *et seq.*, for the purpose of formulating and issuing its decision. Said action may take place at the hearing, or in preliminary proceedings.
 - (C) Upon completion of the hearing, the record will be closed and the Panel will issue a final ruling. The ruling may be based on a recommendation from the hearing designee. The ruling shall be issued in a writing served simultaneously on the appellant and ETP, within 60 days of the record closure.
- (c) The time limits specified above may be adjusted or extended by the Executive Director or the Panel Chairman for good cause, pertinent to the level of appeal.
- (d) Following receipt of the Panel's ruling, the appellant may petition for judicial review in Superior Court pursuant to Code of Civil Procedure Section 1094.5. This petition must be filed within 60 days from receipt of the Panel's ruling.

Authority: Section 10205(m), Unemployment Insurance Code; Section 11410.40, Government Code.

Reference: Sections 10205(k), 10207, Unemployment Insurance Code.

Effective: April 15, 1995

Amended: December 30, 2006